



Rhode Island Executive Office of Health and Human Services
Appeals Office, 57 Howard Ave., LP Building, 2nd floor, Cranston, RI 02920
phone: 401.462.2132 fax: 401.462.0458

Date: May 7, 2015

Docket # 15-125

Hearing Date: March 5, 2015



ADMINISTRATIVE HEARING DECISION

The Administrative Hearing that you requested has been decided against you upon a de novo (new and independent) review of the full record of hearing. During the course of the proceeding, the following issue(s) and Agency policy reference(s) were the matters before the hearing:

**EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)
SECTION: 03943.35 DISABLED CHILD – KATIE BECKETT
0394.35.05 SPECIAL ELIGIBILITY CONDITIONS
0306.05.15 ELIGIBILITY BASED ON DISABILITY
0352.15 ELIGIBILITY BASED ON DISABILITY**

The facts of your case, the Agency regulation(s) and the complete administrative decision made in this matter follow. Your rights to judicial review of this decision are found on the last page of this decision.

Copies of this decision have been sent to the following: You (the minor child in c/o your mother) and Agency representative Michelle Bouchard, RN.

Present at the hearing were: the Appellant's mother and father, the Agency representative Michelle Bouchard, RN from the Katie Beckett Unit, Maggie Kozel, MD (Pediatrician, Katie Beckett Unit) and Frank Canino, PhD (Psychologist, Katie Beckett Unit).

ISSUE: Does the Appellant child fail to meet the Disability and Level of Care (LOC) criteria of the Katie Beckett (KB) Medical Assistance (MA) coverage group as of December 15, 2014?

EOHHS RULES AND REGULATIONS:

Please see the attached APPENDIX for pertinent excerpts from the Rhode Island Executive Office of Health and Human Services Medicaid Code of Administrative Rules (MCAR).

APPEAL RIGHTS:

Please see attached NOTICE OF APPELLATE RIGHTS at the end of this decision.

DISCUSSION OF THE EVIDENCE:**The Agency Representatives testified:**

- The Appellant's parents submitted an application on behalf of the Appellant for benefits from the Katie Beckett Unit on October 27, 2014.
- A review of the Appellant's application started on December 8, 2014 and on December 15, 2014 a notice was issued to the Appellant which stated: the child does not meet the definition of disability used by the Social Security (Policy § 306.05.15) and does not meet the level of care provided in a hospital, nursing facility, psychiatric hospital or an Intermediate Care Facility for those with Mental Retardation (ICF-MR) (Policy § 0394.35.05) and therefore is not approved for Katie Beckett.
- To be approved for Katie Beckett: the child must live at home, is under the age of 19 years old, is determined to be disabled by standards in the Social Security Act and the child requires a LOC at home that is typically provided in a hospital, nursing facility, psychiatric facility or an ICF-MR facility.
- The Appellant's mother submitted an appeal of the Agency's action on December 29, 2014, stating that not all information was submitted and that important therapist documentation was missing.
- The Appellant's application was reviewed by two reviewers, one being Dr. Canino on December 8, 2014, the other was Dr. Kozel.
- Dr. Canino's review did not find that the Appellant has a medical condition so that he would be hospitalized, the Appellant doesn't appear to need the level of care that one would require at an intermediate care facility for those with mental retardation or one that could be found in a nursing home and didn't seem to need the type of help of a restrictive setting provided by a psychological hospital; therefore the Appellant didn't meet the Level of Care required.
- The Agency presented a packet of reports/evaluations which were labeled Agency I, it consisted of:
 - Physician Evaluation for Katie Beckett Coverage Group stating the Appellant's name, address, date of birth and parent contact information; Primary diagnoses being Asperger's Disorder and Behavior D/O; it's noted that the child needs constant supervision, not safe unattended; and that the child receives OT while at school, has a one on one aid at school and has Pathways. This form was completed by Dr. Howard Silversmith on 11-7-14.
 - A Parent's Guardian Questionnaire was completed by Appellant's mother on 10-16-14. This questionnaire states that the Appellant receive:
 - *Adaptive Physical Therapy for .4 hrs. day/ 1day per week

*Occupation Therapy	for .5 hrs. day/ 1 day per week
*Behavior Therapy (CBT)	for 1 hr. per week
*Special Ed.	2-5 day/ 5 day week
*School counseling	for .5 hrs. day/ 1 day week
*Behavior Tech.	throughout school day

- Also on the questionnaire, the Appellant takes Allegera for allergies; does not have an Individual Family Service Plan or receives Early Intervention services; has completed the 1st grade; currently attends an elementary school in Cranston, has an IEP, receives special education and substantial supports in the school, receives special transportation to and from school.
- Also on the questionnaire, the Appellant's mother notes that the Appellant has started to bathe independently (follows verbal and visual directions for cleaning); is independent toileting, eating and sleeping; can hold a long conversation but often interrupts others; can follow multi-step requests but is easily distracted; is very friendly, which concerns parents with regards to strangers; gets up-set if he isn't first in a line or when things are not his way and has difficulty calming down afterwards, to the point where he has hit people due to his frustration; speech is clear and concise; some issue with making eye contact; height and weight are typical; has no vision or hearing impairments; is not as advanced in his hand writing, drawing and coloring as his peers; has difficulty peddling a bicycle but can run, loves karate. Concern lies with safety risk; stressful situations lead to impulsive/aggressive behavior where he has hurt himself and/or other in the past.
- There are "Case Progress Notes" from Taneil Jennings, LICSW from 10 different meetings from May 9, 2014 to September 20, 2014 that were submitted, they state: the child has made some improvement in this behavior, although inconsistency occur; child started at being a low risk with regards to harming himself or others in May of 2014 to medium risk by September 2014.
- There are 9 evaluations of the Appellant from Gershon Psychological Associates that were done from January 31, 2014 through December 24, 2014. Child's cognitive functioning is in the average range overall, child is performing on or above grade level in all academic areas, struggles with social skills, struggles with transitioning or controlling his emotions when faced with a change and has switched schools and is now doing well and managing his frustration and change in more positive ways.
- There is a Functional Behavioral Assessment Report done by the Cranston Public School Dept. which was done on October 3, 2013, the findings are: teacher finds that there is indication that the child scored a high probability for Gilliam Asperger's Disorder; the SSBS-2 which was a norm referenced standardized behavior scale utilized to screen social competence and antisocial behavior of children indicated that the Social Competence Scale was in the AT Risk range; the Antisocial Behavior Scale was also in the At Risk range due to observed irritability/hostility, aggression and defiance/destructive behaviors; child was easily provoked, usually bothered and annoyed other students and frequently has temper outbursts/tantrums; and the child is a bright boy, at or above grade level enjoys socializing with adults and children.

- There is a psychological evaluation done by Gershon Psychological Associates performed on March 10, 2014 and March 12, 2014, findings are: child is able to take in and work with verbal information in the average range, demonstrated average working memory skills and high average processing speed ability, academically, demonstrated solid abilities on all areas assessed, neuropsychological testing reveal difficulties with self-monitoring and affect recognition.
- Reports from Ocean State Pediatrics (Appellant's pediatrician's office) with office visit notes. Last exam (October 3, 2014) notes that the child is a picky eater (not as bad as sibling; with regards to School-Behavior it is noted that (1st grade) academic performance average, no behavior problems. Gets services, OT, behavior modification.
- A "Behavior Support/Intervention Plan" dated October 3, 2014 from the Appellant's elementary school psychologist, Sherrie Koval, MA., MS was submitted to the Katie Beckett Unit for review. This "Plan" sets goals for the Appellant to reach as well as the anticipated goal dates, the data to be collected, the procedure for the data collection and the person whom will be responsible for this observation.
- An "Autism Consultation Narrative" was conducted by the Cranston School Department after observation on September 19th and 26th, 2014 and completed by Renee Puglia, MSW, LCSW. The referral was made due to the child's difficulty controlling his emotional response to situations throughout the school day and his frustration (crying, yelling and aggressive behavior) that he has in the class room. Sixteen recommendations were made in total, four of which are already in place.
- The Appellant's parents submitted a "Sensory Diet" to the Katie Beckett Unit for review. This "diet" lists days and times for swing/trampoline breaks and schedule for breaks after each work task.
- An IEP for the Appellant by the Cranston School Department for the time frame of November 3, 2014 through November 2, 2015 was submitted for the Katie Beckett Unit to review. Some of the IEP findings are that the child/Appellant is a seven year old, funny, outgoing student who enjoys interacting with his peers and adults within the class-room, is a superior reader, his written expression also is strong and was able to complete the district math assessment with 76% accuracy. Some of the child/Appellant's weaknesses are that he has difficulty following class-room rules, procedures and etiquette, needs to be provided with choices whenever possible, struggles with fine motor skill, has poor letter formation and becomes frustrated easily by non-preferred tasks or when he falls behind his peers during a work task.
- In review of the reports that the Appellant's parents submitted and that had been reviewed by the Katie Beckett Unit, Dr. Canino noted from a physician's note there is a diagnosis of Asperger's Disorder that the child needs constant supervision but there was no report submitted to back up the physician's comment; the Parent Questionnaire was very informing, the child receives services from his school, no history of medication or hospitalization, child's daily life is fairly independent, can verbalize, has tendency to be distractible/fugitive,

has some issue with anger defiance, has some difficulty with social skills, does well with HBT; there was no records from provider(s) for the time period for September – October 2014 (prior to the child switching schools); there was a ADHD finding; no record of an IEP in place or submitted; achievements are in the normal range, nothing outstanding; intellectual/cognitive reasoning skills are pretty solid; there is no history of the Appellant taking medication or had been hospitalized due to his issues; and finally, nothing had been provided that points to the Appellant being disabled or that would meet the LOC required.

- Dr. Kozel, the other reviewer, reached the same conclusion as Dr. Canino but also noted the frustration level at school appears to be high and that some of the issues were not being addressed at the school. Dr. Kozel noted that she was “more on the fence” as to the Appellant meeting the disability level required due to the level of services that he receives at his school but ultimately choice that the Appellant was not disabled. Also, Dr. Kozel did not find any LOC issues that meet the needed requirements for Katie Beckett.
- There seems to be missing some assessments, one being which would show why medication (Sertraline) was prescribed.

The Appellant testified:

- The Appellant’s mother testified that one of the reasons that there was an appeal filed was due to not all of the documents that would be beneficial to be their child had been submitted for the Katie Beckett Unit to review.
- The Appellant’s parents presented a copy of their child’s IEP.
- An IEP for the Appellant by the Cranston School Department for the time frame of November 3, 2014 through November 2, 2015 was submitted for the Katie Beckett Unit to review. Some of the IEP findings are that the child/Appellant is a seven year old, funny, outgoing student who enjoys interacting with his peers and adults within the class-room, is a superior reader, his written expression also is strong and was able to complete the district math assessment with 76% accuracy. Some of the child/Appellant’s weaknesses are that he has difficulty following class-room rules, procedures and etiquette, needs to be provided with choices whenever possible, struggles with fine motor skill, has poor letter formation and becomes frustrated easily by non-preferred tasks or when he falls behind his peers during a work task.
- The child is doing much better now that he is at his new elementary school because he is receiving more support, one on one services throughout the day.
- The child’s IEP calls for one on one services with special educational services in the mornings and regular ed. in the afternoon.
- The parents of the Appellant handed in a letter during the hearing from the Appellant’s special education teacher dated March 4, 2015 (labeled Appellant’s exhibit I). The letter states in part that the child(Appellant) had switched elementary schools in November 2014; has been placed in a self-contained classroom with inclusion in the regular education class for reading; has been experiencing a decrease in behavior in this placement over an inclusion type classroom and his one on one aid; had displayed running, biting, hitting spitting,

kicking and throwing object with his struggle with behavior; no longer seems to have an issue with being last; and is now responding to the PBIS program, appears to be more relaxed in school.

- The parents of the Appellant handed in an "Educational Parent Conference Report" dated January 15, 2015 during the hearing from the Appellant's special education teacher (labeled Appellant's exhibit II). This report/conference discussed that due to the Appellant still displaying unsafe behavior (running, biting, kicking, spitting, yelling and left the class-room without permission) that the child's IEP will be amended so that he will continue to receive one on one services for the rest of the school year.
- The parents of the Appellant handed in a "Progress Note" during the hearing from Women & Infants Hospital, Dept. of Pediatrics – Center for Children and Pamela Plucinski, PMH-CNS, BC and Families" dated February 24, 2015 and December 9, 2014 (labeled Appellant's exhibit III). The notes state that the child (Appellant) is at a new school and has more friends and is now eager to go to school although he remains rigid and inflexible at home. There is also a plan to prescribe Sertraline Solution 20mg/ML as of 2-24-2015.
- The parents of the Appellant handed in a "Child Psychiatry Consult Service Intake Form" during the hearing from the Women & Infant's Hospital, Autism Spectrum Disorder Clinic dated October 27, 2014. The consult states, "There is definitely anxiety symptoms present however (the child) is not functioning well in current school environment and there is a schedule transition to another school...will hold off on medication..."
- The parents of the Appellant handed in a "Daily Behavior Report" from the child's school/unsigned during the hearing and dated March 2 & 3, 2015 (labeled Appellant's exhibit IV). The report notes that the child did very well for having a delay and a sub that day (2nd). On the 3rd, it was noted a "good day", the child (Appellant) had banged another child's hand for being too close to his but the child's hands were not hurt and the child (Appellant) apologized.
- The parents of the Appellant handed in a letter during the hearing which states an average day for the Appellant (labeled Appellant's exhibit V).
- The parents of the Appellant handed in a letter during the hearing from the Appellant's former elementary school principal dated October 6, 2014. The letter is in regards to an incident that occurred in school on October 6, 2014 where the child (Appellant) became non-compliant, disruptive and aggressive and as a result was suspended from school for two days.
- The parents have not put the child (Appellant) on medication due to in particular, the Appellant has been very good the past few weeks. Although he still likes to control the environment and this could get out of hand an average of twice a month.
- The parents are only 50% confident that the child (Appellant) is able to settle himself down before losing control.
- The child (Appellant) is a very picky eater, although his weight is normal and not underweight. The parents wish they could get food therapy for the child to assist the child dealing with the texture of the foods, more so than the taste.

- The child (appellant)'s therapist is assisting with the child desire to always be first/ the order of his choosing.
- The parents have some concern for safety for the child.
- The parents have so far held off on putting the child (Appellant) on medication(s).

The Appellant's parents requested that the record of hearing be kept open until April 9, 2015 in order to allow an assessment of the Appellant to be conducted and to have the results submitted to the Katie Beckett Unit for their review. The Agency will have until April 16, 2015 to inform this Hearing Office of their review of any assessment or other documentation that the Appellant submitted by April 9, 2015.

FINDINGS OF FACT:

- The Appellant's parents submitted an application on behalf of the Appellant for benefits from the Katie Beckett Unit on October 27, 2014.
- A review of the Appellant's application started on December 8, 2014 and on December 15, 2014 a notice was issued to the Appellant which stated: the child does not meet the definition of disability used by the Social Security (Policy § 306.05.15) and does not meet the level of care provided in a hospital, nursing facility, psychiatric hospital or an Intermediate Care Facility for those with Mental Retardation (ICF-MR) (Policy § 0394.35.05) and therefore is not approved for Katie Beckett.
- The Appellant's mother submitted an appeal of the Agency's action on December 29, 2014, stating that not all information was submitted and that important therapist documentation was missing.
- The Appellant's application was reviewed by two reviewers, one being Dr. Canino on December 8, 2014, the other was Dr. Kozel (pediatrician).
- Physician Evaluation for Katie Beckett Coverage Group stating the Appellant's name, address, date of birth and parent contact information; Primary diagnoses being Asperger's Disorder and Behavior D/O; it's noted that the child needs constant supervision, not safe unattended; and that the child receives OT while at school, has a one on one aid at school and has Pathways. This form was completed by Dr. Howard Silversmith on 11-7-14.
- A Parent's Guardian Questionnaire was completed by Appellant's mother on October 16, 2014. This questionnaire states that the Appellant receive:

*Adaptive Physical Therapy	for .4 hrs. day/ 1day per week
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- Also on the questionnaire, the Appellant takes Allegera for allergies; does not have an Individual Family Service Plan or receives Early Intervention services; has completed the 1st grade; currently attends an elementary school in Cranston, has an IEP, receives special education and substantial supports in the school, receives special transportation to and from school.

- Also on the questionnaire, the Appellant's mother notes that the Appellant has started to bath independently (follows verbal and visual directions for cleaning); is independent toileting, eating and sleeping; can hold a long conversation but often interrupts others; can follow multi-step requests but is easily distracted; is very friendly, which concerns parents with regards to strangers; gets up-set if he isn't first in a line or when things are not his way and has difficulty calming down afterwards, to the point where he has hit people due to his frustration; speech is clear and concise; some issue with making eye contact; height and weight are typical; has no vision or hearing impairments; is not as advanced in his hand writing, drawing and coloring as his peers; has difficulty peddling a bicycle but can run, loves karate. Concern lies with safety risk; stressful situations lead to impulsive/aggressive behavior where he has hurt himself and/or other in the past.
- There are "Case Progress Notes" from Taneil Jennings, LICSW from 10 different meetings from May 9, 2014 to September 20, 2014 that were submitted, they state: the child has made some improvement in this behavior, although inconsistency occur; child started at being a low risk with regards to harming himself or others in May of 2014 to medium risk by September 2014.
- There are 9 evaluations of the Appellant from Gershon Psychological Associates that were done from January 31, 2014 through December 24, 2014. Child's cognitive functioning is in the average range overall, child is performing on or above grade level in all academic areas, struggles with social skills, struggles with transitioning or controlling his emotions when faced with a change and has switched schools and is now doing well and managing his frustration and change in more positive ways.
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- There is a psychological evaluation done by Gershon Psychological Associates performed on March 10, 2014 and March 12, 2014, finding are: child is able to take in and work with verbal information in the average range, demonstrated average working memory skills and high average processing speed ability, academically, demonstrated solid abilities on all areas assessed, neuropsychological testing reveal difficulties with self-monitoring and affect recognition. Six recommendations were made.
- Reports from Ocean State Pediatrics (Appellant's pediatrician's office) with office visit notes. Last exam (October 3, 2014) notes that the child is a picky eater (not as bad as sibling; with regards to School-Behavior it is noted that (1st grade)

academic performance average, no behavior problems. Gets services, OT, behavior modification.

- A "Behavior Support/Intervention Plan dated October 3, 2014 from the Appellant's elementary schools psychologist, Sherrie Koval, MA., MS was submitted to the Katie Becket Unit for review. This "Plan" sets goals for the Appellant to reach as well as the anticipated goad dates, the data to be collected, the procedure for the data collection and the person whom will be responsible for this observation.
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- The Appellant's parents submitted a "Sensory Diet" to the Katie Beckett Unit for review. This "diet" lists days and times for swing/trampoline breaks and schedule for breaks after each work task.
- An IEP for the Appellant by the Cranston School Department for the time frame of November 3, 2014 through November 2, 2015 was submitted for the Katie Beckett Unit to review. Some of the IEP findings are that the child/Appellant is a seven year old, funny, outgoing student who enjoys interacting with his peers and adults within the class-room, is a superior reader, his written expression also is strong and was able to complete the district math assessment with 76% accuracy. Some of the child/Appellant's weaknesses are that he has difficulty following class-room rules, procedures and etiquette, needs to be provided with choices whenever possible, struggles with fine motor skill, has poor letter formation and becomes frustrated easily by non-preferred tasks or when he falls behind his peers during a work task.
- In review of the reports that the Appellant's parents submitted from a physician's note there is a diagnoses of Asperger's Disorder that the child needs constant supervision but there was no report submitted to back up the physician's comment; the Parent Questionnaire was very informing, the child receives services from his school, no history of medication or hospitalization, child's daily life is fairly independent, can verbalize, has tendency to be distractible/fugitive, has some issue with anger defiance, has some difficulty with social skills, does well with HBT; there was no records from provider(s) for the time period for September – October 2014 (prior to the child switching schools); there was a ADHD finding; no record of an IEP in place or submitted; achievements are in the normal range, nothing outstanding; intellectual/cognitive reasoning skills are pretty solid; there is no history of the Appellant taking medication or had been hospitalized due to his issues; and finally, nothing had been provided that points to the Appellant being disabled or that would meet the LOC required.
- Dr. Kozel, the other reviewer reached the same conclusion as Dr. Canino but also noted the frustration level at school appears to be high and that some of the issues were not being addressed at the school. Dr. Kozel noted that she was

“more on the fence” as to the Appellant meeting the disability level required due to the level of services that he receives at his school but ultimately choice that the Appellant was not disabled. Also, Dr. Kozel did not find any LOC issues that meet the needed requirements for Katie Beckett.

- The parents of the Appellant handed in a letter during the hearing from the Appellant's special education teacher dated March 4, 2015 (labeled Appellant's exhibit I). The letter states in part that the child (Appellant) had switched elementary schools in November 2014; has been placed in a self-contained classroom with inclusion in the regular education class for reading; has been experiencing a decrease in behavior in this placement over an inclusion type classroom and his one on one aid; had displayed running, biting, hitting spitting, kicking and throwing object with his struggle with behavior; no longer seems to have an issue with being last; and is now responding to the PBIS program, appears to be more relaxed in school.
- The parents of the Appellant handed in an “Educational Parent Conference Report” dated January 15, 2015 during the hearing from the Appellant's special education teacher (labeled Appellant's exhibit II). This report/conference discussed that due to the Appellant still displaying unsafe behavior (running, biting, kicking, spitting, yelling and left the class-room without permission) that the child's IEP will be amended so that he will continue to receive one on one services for the rest of the school year.
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- The parents of the Appellant handed in a “Child Psychiatry Consult Service Intake Form” during the hearing from the Women & Infant's Hospital, Autism Spectrum Disorder Clinic dated October 27, 2014. The consult states, “There is definitely anxiety symptoms present however (the child) is not functioning well in current school environment and there is a schedule transition to another school...will hold off on medication...”
- The parents of the Appellant handed in a “Daily Behavior Report” from the child's school/unsigned during the hearing and dated March 2 & 3, 2015 (labeled Appellant's exhibit IV). The report notes that the child did very well for having a delay and a sub that day (2nd). On the 3rd, it was noted a “good day”, the child (Appellant) had banged another child's hand for being too close to his but the child's hands were not hurt and the child (Appellant) apologized.
- The parents of the Appellant handed in a letter during the hearing which states an average day for the Appellant (labeled Appellant's exhibit V).
- The parents of the Appellant handed in a letter during the hearing from the Appellant's former elementary school principal dated October 6, 2014. The letter is in regards to an incident that occurred in school on October 6, 2014 where the

child (Appellant) became non-compliant, disruptive and aggressive and as a result was suspended from school for two days.

- Although the parents have been given a recommendation to medical the child (Appellant), they are hesitant to do so.

Prior to the record of Hearing closing on April 9, 2015, the Appellant's parents submitted additional evidence which consists of:

- ✓ a letter from the Appellant's mother dated April 3, 2015
- ✓ Reports from Gershon Psychological Associates, LLC and Cheryl Raposa LICSW which reflect that on February 27, 2015 there was a meeting with the Appellant and his mother, the Appellant had a good week, decreased aggression with this sister and increased tolerance of frustration, was pleasant and engaged in activities, not active on medication; on March 13, 2015 had a meeting with Appellant and his mother for counseling, had a pretty good week, able to use his words when frustrated as well as refraining from aggressing, has begun to spit at others when upset, behavior continues to be inconsistent and gains are small, needs frequent and consistent re-enforcement, was pleasant and engaged in activities, not active on medication counseling, practiced taking turns and winning/loosing, was pleasant and engaged in activities, not active on medication. Counseling to continue.
- ✓ A Vineland Adaptive Behavior Scale, 2nd edition (VABS-II) which was assessed on 3-15-2015 by RI CART. Appellant's adaptive level scores were all in the "adequate" level except for coping skills and socialization where to scores were in the "moderately low" level.
- ✓ An Autism Diagnostic Observation Schedule, 2nd (ADOS-2) assessed on March 16, 2015 by RI-CART indicating that the ADOS scoring Algorithm result was for Autism and the severity score was in the Moderate level.
- ✓ A Social Responsiveness Scale, 2nd (SRS-2) assessed on March 15, 2015 by RI-CART indicating that the SRS scoring result reflexed Moderate Symptoms.
- ✓ "Daily Behavior Report" log from the Appellant's elementary school. The record closed on April 9, 2015 with no additional documentation being submitted. The reporter has to choose between "spectacular", "Ready to Learn", "Warning" and "Consequence", of the twenty days reported; zero were marked Consequence, two were marked "warning", ten were marked as "Ready to Learn", and three were marked as "Spectacular". All but three of the days have comments indicating that it was a good/great day.

CONCLUSION:

The issue to be decided is whether the Appellant /child failed to meet the Disability and Level of Care (LOC) criteria of the Katie Beckett (KB) Medical Assistance (MA) coverage group as of December 15, 2014?

The Appellant's parents submitted an application for services offered through the Kate Beckett Unit on behalf of their seven year old son (Appellant) on October 27, 2014. After careful review of the application and supporting documents that had been submitted on behalf of the Appellant, the KB Unit issued a denial notice on December 15, 2014. The reasoning stated in the notice is that the Appellant does not meet the definition of disability used by Social Security and does not meet the level of care provided in a hospital, nursing facility, psychiatric hospital or an intermediate care facility for those with mental retardation. On behalf of the Appellant/child, his parents filed an Appeal of the agency's decision to deny eligibility indicating that not all the information had been submitted and that important therapist documentation was missing.

The Agency's policies regarding Medical Assistance (MA) finds that the KB coverage group consists of certain disabled children under the age of eighteen (18) who are living at home but who require the level of care provided in a Hospital, a Nursing Facility or an Intermediate Care Facility for Mentally Retarded (ICF/MR). The Agency is mandated to determine disability for MA in accordance with the applicable law, including the Social Security Act and regulations (20 CFR 416.901-461.998). If disability is established, the LOC is evaluated by determining if in the absence of appropriate home and community interventions and supports, the child would either reside in an institutional facility or be at immediate risk for such placement. A reviewer would look for types of intensive therapies normally given inside an institution.

Evidence that the Appellant's parents submitted for consideration consists of:

- The Physician Evaluation for Katie Beckett Coverage Group form signed by Dr. Silversmith on November 7, 2014 indicating that the Appellant/child's primary diagnoses Asperger's and Behavior Disorder citing at clinical findings by Gershon Psychological Associates from a full neuro psych evaluation administered on April 2, 2014 but this evaluation was not provided and if it had would have provided scores and how a conclusion was reached.
- The Parent/Guardian Questionnaire completed by the Appellant/child's mother on October 16, 2014 with five additional typed pages. Questionnaire lists that the Appellant/child receives physical and occupational therapy for at least half an hour per day, one day a week; behavior therapy one hour per week from a therapist; special education 2-5 school days; and a behavior tech throughout the school day. Only takes medical for allergies. No Individual Family Services Plan in place. Currently in the second grade, receiving special ed., substantial support services in school, and is having problems in school Appellant/child has started bathing independently, dresses, sleeps and toileting independently, needs assistants with teeth and hair brushing. Is able to have conversations when focused; his speech is clear and concise; can follow a multi-step request

but is easily distracted. Is very friendly and outgoing, eager to socialize but when frustrated/mad, he will hit, scream, and throw his body around. Enjoys board games and other social games; has been taken karate lessons for six months and swim lessons for a years and a half. Has been reading since the age of three, although he does well in math, he finds it harder than reading. There are no vision or hearing impairments. Receives OT therapy at school, he is not as advanced in his hand writing, drawing and coloring as his peers. The Appellant/child has a twin who is listed as someone "who has high functioning Autism".

- Case Progress Notes from Taneil Jennings, LICSW from ten different visits from May 29, 2014 through September 20, 2014. Problems listed as being with friendships and sibling has made progress the majority of the time during these sessions; the last session states that the Appellant/child hit his teacher and another student due to frustration.
- Gershon Psychological Associates, ten session notes beginning January 31, 2014 to December 24, 2014. These notes state: psychological evaluation, WISC and WRAT were administered (3-10-14); second part of psychological evaluation, VMI and NEPSY , very active/easily distracted, evaluation administered 3-12-14; results of evaluation discussed with parents – cognitive function is in the average range overall, performing on or above grade level in all academic areas, struggles with social skills, transitioning and controlling emotions, recommendations made to both parents and school; Appellant/child started new school, doing well; session on 12-5-14, Appellant/child doing well and managing frustration & change in more productive ways and able to use his words more; 12-24-14 session notes that small gains were being made. Throughout all sessions, Appellant/child not active on medications.
- A Functional Behavioral Assessment Report conducted by the Appellant/child's school department and dated 10-3-2014. Report notes that Dr. Johnstone at Gershon Psychological Assoc. diagnosed the Appellant/child with Pervasive Developmental Disorder NOS; full scale cognitive abilities were in the average range, processing speed was an area of strength while his non-verbal abilities were a significant weakness. Education testing indicates that reading is strength, while sentence comprehension and spelling were in the high average range; math computation was in the average range. Visual Motor Integration was in the low average range. Sensory Processing indicated elevated scores in the areas of hearing, planning and ideas and at risk scores in the areas of vision and body awareness. A measure of attention was in the borderline range and Connor-3 parent ratings were very elevated for inattention and hyperactivity while the teacher ratings were very elevated for hyperactivity/impulsivity and peer relations. On the Gilliam Asperger's Disorder Scale, parent rating indicated borderline probability while the teacher form indicted high probability. In March '14, the school completed Psychological Evaluation; SSBS-2 which was a norm referenced, standardized behavior scale utilized to screen social competence and antisocial behavior of children, indicated that the Social Competence Scale was in the At Risk range. Appellant/child's teacher noted average peer relations but with some difficulties with compliance/self-management and average

academic behaviors. Antisocial Behavior Scale was also in the At Risk range due to hostility/aggression/defiance and destructive behaviors. The Appellant/child's teacher endorsed 4 out of 9 characteristics reflective of inattention and 9 of 9 characteristics reflective of hyperactivity/impulsivity. On 9-16-14, the Appellant/child was assigned a one on one teacher assistant and given two hours of support each day from the special educator, along with a sensory diet providing better support of his needs.

- A Psychological Evaluation by Gershon Psychological Associates administered on March 10 & 12, 2014. Results are that the Appellant/child is able to take in and work with verbal information in the average range, has the ability to take in and process visual information is low average; average working memory skills and high average processing speed abilities; displays solid abilities in the area of vision perception but struggles with fine motor control. Neuropsychological testing revealed difficulties with self-monitoring and affect recognition. Diagnostic Impression, Pervasive Developmental Disorder, Not Otherwise Specified.
- Ocean State Pediatrics, physical exams and well checks, with notes. Most current exam (10-3-14) notes Appellant/child is a first grader, academic performance average, no behavior problems, gets services – OT, behavior modification; picky eater; Autism Spectrum Disorder (ASD) – mild.
- Behavior Support/Intervention Plan, administered by the School Psychologist on October 3, 2014. This Plan lists several goals, date of anticipated goal is reached, what data will be collected and who will be responsible for the gathering of the data.
- Pupil Personnel Services – Autism Consultation Narrative dated September 19 & 26, 2014. Observer witnessed Appellant/child screaming and running down the hall, away from the principal and teacher's aide (9-19-14) & how with all the necessary supports in place, how the Appellant/child was able to follow his individual/school schedule (9-26-14).
- An IEP, with effective date 11-3-14 to 11-2-2015 for the Appellant/child, who is in regular class 79%-40% of the time, enjoys interacting with peers and adults but shows difficulty with following classroom rules and is easily frustrated with non-preferred tasks; his behavior impedes his and of others learning; does not need an extended school year services; superior in reading, strong with written expression and average in math.
- A letter from the Appellant/child's school principal dated October 6, 2014 explaining why the Appellant/child was suspended for two days for punching his teacher.
- A schedule submitted by the Appellant's parent with regards to his sensory diet.
- An Educational Parent Conference dated January 15, 2015 from the Appellant/child's first grade teacher. Although the behavior has improved, he still continues to struggle with it.
- A letter from the Appellant/child's special education teacher dated March 4, 2015 indicating that he has been placed in a self-contained classroom with inclusion into the regular education class for reading and itinerants. The Appellant/child continues to struggle with his behavior, which has decreased.

- Child Psychiatry Consult Service Intake Form completed by Pamela Plucinski, MS APRN, BC on October 27, 2014. A description of the Appellant/child lists that he a “happy kid”, enjoys hobbies (video games, t.v., games), some positive peer relationships, poor eye contact, cooperative manner, speech & language, perception, thought content, thought process, affect, motor skills all are unremarkable, has no thoughts/plans about hurting himself or others. Initial diagnosis is Anxiety Disorder NOS and Autistic Disorder.
- Progress Notes regarding meeting held by Pamela Plucinski, PMH-CNS, BC (Center for Children and Families – Women and Infants Hospital) and the Appellant/child’s mother on 12-9-14 and 2-24-15. Mother reports on 12-9-14 that the change of the new school is quite effective; appellant/child has more friends and is eager to go to school but still quite rigid in his routine and inflexible. HBTS is in the home working with his sibling and is getting limited assistance while they are there. No medication recommended. Mother reports on 2-24-15 of an elevated risk regarding Appellant/child’s behavior; new school is the best place for him; there seems to be a lack of communication between the school and parents; social struggles continue – has bitten peers/sibling/teacher and thrown chairs. Plan to begin Sertraline Solution 20 mg/ML.
- Daily Behavior Report dated March 2 through 6, 2015 unsigned, likely from Appellant/child’s school. Although only two days behaviors are listed one was spectacular, indicating that the Appellant/child “did very well” with a substitute teacher. The other day listed as “ready to learn”, indicating that it was a good day, although the Appellant/child banged a classmates hand for being near his, he later apologized.
- An outline with an example submitted by the parents of what the Appellant/child is like at home and school.
- A cover-letter from the Appellant/child’s mother dated April 3, 2015, indicating attached ADOS testing from RI CART, clinical notes from therapy sessions and daily behavior logs from new elementary school.
- Three therapy session notes from Cheryl Raposa, LICSW – Gershon Psychological Associates. February 27, 2015 states that the Appellant/child had a good week, has had decreased aggression towards his sibling and increased tolerance of frustration; no active medication being taken. March 13, 2015 states that the Appellant/child has a pretty good two weeks, was able to use his words when frustrated/refrained from aggressive behavior but has begun splitting when upset. Although behavior is inconsistency, small gains are being made; no active medication being taken. March 27, 2015 indicates that session had Appellant/child taking turns and winning/losing; appeared pleasant and engaged in activities; no active medication being taken.
- A Participant Summary Report done by RI CART (Rhode Island Consortium for Autism Research and Treatment) dated March 15, 2015. Autism Diagnostic Observation Schedule, 2nd Edition (ADOS-2) was administered as a measure of Autism Spectrum Disorder symptoms presenting, although this test does not replace a full and careful clinical evaluation it does provide information that indicates whether observed behaviors are more or less consistent with a

diagnosis of Autism Spectrum Disorder. Module 3 was administered, ADOS scoring algorithm result shows Autism and the ADOS severity score was moderate. The Social Responsiveness Scale, 2nd (SRS-2) was also administered to measure ASD symptoms as reported by an individual who knows the Appellant/child, whose mother responded with scores reflecting Moderate Symptoms for the Appellant/child. The Vineland Adaptive Behavior Scale, 2nd (VABS-II) was administered measuring adaptive functioning range of developmental domains, Adaptive Composite score was Adequate.

- Daily Behavior Reports, showing the behavior for five weeks (20 school days). March 2-6, 2015, indicating that the Appellant/child had a spectacular day or was ready to learn and comments were "good day", "great day" and "no problems, all smiles". March 9-13, 2015, although there were two "good days" and a "great day", the Appellant/child did spit and hit a peer but was able rebound from these incidents. March 16-20, 2015 noted that one day the Appellant/child came right in and began working/had a great day. Although on another day, he hit a peer and lost his computer access as a result. March 31 to April 3, 2015 report indicate four "great days" with one "warning" given due to not reading for a particular teacher in the morning but rebounded in the afternoon. April 6-10, 2015, report shows two "warning days" due to having a melt-down and not getting his favorite color marker but was able to calm down after 35 minutes.

The Appellant's parents both provided testimony with regards to their concerns for their seven year old son. The parents are hoping that with KB services that their child will be able to obtain services at home similar to what he is receiving at school. As of late, the Appellant/child has been doing very well, to the point that although that medical has been suggested, the parents are holding off on medicating the Appellant/child. The transfer to the "new" school has been well received and the child is doing much better. The improvement is a result of a better support system in place at this new school; for example, there is a one-on-one aide for the Appellant/child that helps throughout the day, every day. With KB services, they may be able to enroll the Appellant/child into Food Therapy since he is a very picky eater although he is not under-weight; also to assist with melt-downs at home, which average twice a month.

To meet the Social Security definition of disabled, which is a mandatory requirement to be found eligible for Katie Beckett, certain criteria must be met. The Social Security Administration has a listing for Autism Disorder found in § 112.10

112.10 Autistic Disorder and Other Pervasive Developmental

Disorders: Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted

repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

a. Qualitative deficits in the development of reciprocal social interaction;

and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and

c. Markedly restricted repertoire of activities and interests;

or

2. For other pervasive developmental disorders, both of the following:

a. Qualitative deficits in the development of reciprocal social interaction;

and

b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

and

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraphs B2 of 112.02.

Unfortunately, with all the documents, reports and evaluations submitted, there may be something there to reach the level of being concerned but there has been nothing presented or testimony provided that would indicate that the Appellant has met the listing of disability due to Autism. As reported, the Appellant/child has made some improvements since switching schools, making "small gains" and starting to regulate his frustrations himself. There has also only been a suggestion of medication but the parents aren't will to pursue at this time. The Physician Evaluation for Katie Beckett Coverage Group indicates that the child needs constant supervision and was not safe unattended but does not explain why, what would likely happen and yet in contrasted, no other report/evaluation supports this recommendation. The Appellant appears to be

at least working a school grade level, somewhat independent (starting to wash, toileting, eating & sleeping) and is able to communicate with others. Regardless of this issue, there has been no evidence presented or testimony provided that would indicate that the Appellant would meet the Level of Care that is also mandatory requirement for KB services. Nothing has been presented that would indicate that the Appellant/child has a medical condition that would require hospitalization or care that can be found in a nursing home; he doesn't appear to need a restrictive setting that is found in an ICF-MR; and isn't in the need of such a restrictive setting that could be found in a psychological hospital.

After a careful review of the Agency's policies, as well as the evidence and testimony given, this Appeals Officer finds that the Appellant does not meet the Disability and Level of Care criteria of the Katie Beckett Medical Assistance coverage group as of December 15, 2014. The Appellant's request for relief is therefore denied.

A handwritten signature in black ink, appearing to read "Thomas D. Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Appeals Officer

APPENDIX

**EXECUTICE OFFICE OF HEALTH AND HUMAN SERVICES (EOHHS)
MEDICAID CODE OF ADMINISTRATIVE RULES (MCAR)**

0306.05.15 ELIGIBILITY BASED ON DISABILITY

REV: October 2013

To be eligible for Medicaid because of permanent or total disability, a person (adult or child) must have a permanent physical or mental impairment, disease or loss, other than blindness, that substantially precludes engagement in useful occupations within his/her competence.

A physical or mental impairment is an impairment which results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable, clinical and laboratory diagnostic techniques.

For purposes of eligibility, an individual is disabled if s/he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months or, in the case of a child, if s/he suffers from any medically determinable physical or mental impairment of comparable severity.

Statements of the applicant, including the individual's own description of the impairment (symptoms) are, alone, insufficient to establish the presence of a physical or mental impairment.

0352.15 ELIGIBILITY BASED ON DISABILITY

REV: 07/2010

- A. To qualify for Medical Assistance, an individual or member of a couple must be age 65 years or older, blind or disabled.
- B. The Department evaluates disability for Medical Assistance in accordance with applicable law including the Social Security Act and regulations (20 C.F.R §§416.901-416.998).
 - o For any adult to be eligible for Medical Assistance because of a disability, he/she must be unable to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted, or can be expected to last for a continuous period of not less than twelve (12) months (20 C.F.R. §416.905).
 - o The medical impairment must make the individual unable to do his/her past relevant work (which is defined as "work that you have done within the past

15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it" (20 C.F.R. §416.960(b)) or any other substantial gainful employment that exists in the national economy (20 C.F.R. §416.905).

- The physical or mental impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. The individual's statements alone are not enough to show the existence of impairments (20 C.F.R. §416.908).

0394.35.05 SPECIAL ELIG CONDITIONS

REV:08/2006

To be eligible for Katie Beckett coverage, it must be determined that:

- The child requires the level of care provided in a hospital, a Nursing Facility, or an ICF-MR. The DHS worker must assure that a completed assessment of the child's needs is sent to the Center for Child and Family Health (CCFH). This unit has the responsibility of determining the level of care and disability status for the child and the specific time frame for re-evaluation.
- The level of care provided at home is appropriate for the child;
- The estimated cost to Medical Assistance for providing the appropriate level of care at home does not exceed the cost to Medical Assistance for providing care in an institutional setting.

If the child meets these special eligibility conditions and is otherwise eligible, the DHS worker authorizes medical coverage. Children eligible for Medical Assistance under this coverage group may be enrolled in a Rite Care Health Plan in accordance with provisions contained in Section 0348, if they are not otherwise covered by a third party health insurance plan.

0394.35 DISABLED CHILD-KATIE BECKETT

REV:08/2006

This coverage group consists of certain disabled children under the age of nineteen (19) who are living at home and who would qualify for Medical Assistance if in a medical institution.

"Katie Beckett" coverage requires that the child meet special eligibility conditions in addition to financial eligibility.

A child under 19 years of age who is living at home but who is in need of the level of care provided in a hospital, Nursing Facility, or Intermediate Care Facility for Mental

Retardation, has his/her Medical Assistance financial eligibility determined as if s/he were actually institutionalized. ONLY THE CHILD'S OWN INCOME AND RESOURCES ARE USED IN THE DETERMINATION OF FINANCIAL ELIGIBILITY. THE INCOME AND RESOURCES OF THE CHILD'S PARENTS ARE NOT DEEMED TO BE AVAILABLE TO THE CHILD. A "Katie Beckett" child is deemed Categorically Needy for the full scope of medical services. The purpose of "Katie Beckett" coverage is to make Medical Assistance for home care available to children who might otherwise be disqualified due to the parents' income.

Social Security

112.10 Autistic Disorder and Other Pervasive Developmental Disorders:

Characterized by qualitative deficits in the development of reciprocal social interaction, in the development of verbal and nonverbal communication skills, and in imaginative activity. Often, there is a markedly restricted repertoire of activities and interests, which frequently are stereotyped and repetitive.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied.

A. Medically documented findings of the following:

1. For autistic disorder, all of the following:

- a. Qualitative deficits in the development of reciprocal social interaction; and
- b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity; and
- c. Markedly restricted repertoire of activities and interests;

or

2. For other pervasive developmental disorders, both of the following:

- a. Qualitative deficits in the development of reciprocal social interaction; and
- b. Qualitative deficits in verbal and nonverbal communication and in imaginative activity;

and

B. For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the appropriate age-group criteria in paragraph B1 of 112.02; or, for children (age 3 to attainment of age 18), resulting in at least two of the appropriate age-group criteria in paragraphs B2 of 112.02.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.